

**DRAFT**

# Kensington Municipal Advisory Council Minutes Special Meeting of April 21, 2005

Council Members present:

Chair: Reyes Barraza

Secretary: Richard Karlsson

Council Member: Kay Reed

Council Member: Pam Brown

Alternate Member: Christopher Brydon

1. The meeting commenced at 7:15 p.m. All members were present except Patrick Tahara, who had an excused absence; alternate member Christopher Brydon was present in his place.
2. There were no citizen comments at the beginning of the meeting.
3. **Proposed County Ordinance Regarding Temporary Events.** Chair Barraza opened the meeting by stating that its purpose was to discuss the proposed County-wide ordinance regarding temporary events. He stated that the order of discussion would be for Supervisor John Gioia to first summarize the currently proposed ordinance and then KMAC would hear from the public. He requested that those intending to speak fill out speaker cards, and said he would call speakers in the order that they raised their hands to speak.

Supervisor Gioia then spoke and reviewed the main points of the proposed ordinance and a three-page summary of same. He also reviewed existing events ordinances for the cities of Clayton and Orinda. Supervisor Gioia stated that the intent of the changes to the proposed ordinance were to be responsive to the comments made to the initial ordinance and stated that the latest version was still "a work in progress". He believed that after working with Community Development and the County Counsel's Office the new version was much more responsive to the community concerns in many areas, such as limitations on the number of events, size of events, parking, hours of operation, sound and that it addressed issues of public health and safety. Upon summarizing the new aspects of the ordinance, comments were made in the following areas: a) that events could be scheduled too frequently, b) that the potential fee, time and travel required by a resident to challenge an event was too great, c) that the notice period was too short, and d) that this ordinance sanctioned events that were otherwise illegal.

The first speaker was Dr. Leonard Schwartzburd, of 511 Coventry Rd, who was concerned with who would enforce the ordinances provisions, that the parking

problems were not addressed, and that since he felt the provisions now in effect had not been followed, what guarantees would the residents have that the new provisions would not be followed. He questioned the ability to measure the sound and believed that the applicant should pay for enforcement, additional costs of police and any other fees. His primary concern was that if the ordinance were approved, the County would make lawful that sort of thing that is not **currently** lawful. He therefore opposed the ordinance.

Tony Folger-Brown of 555 Coventry Rd. was opposed to the ordinance because of the noise that has resulted from the events. She stated that at the last event she had timed an individual continually playing the drums for 45 minutes. She felt the proposed ordinance required a burden on the community to prove that the event should not occur, instead of placing the burden upon the property owner to prove his/her event would not create a disturbance. She then expressed concerns about the difficulty of measuring sound in the past. She also believed that the ordinance is too subjective and the zoning administrator's latitude to approve too great.

Joan Gallegos, 239 Cambridge Ave. was concerned regarding the "broad brush" of the ordinance and did not believe enough time had been spent considering the impact upon events beyond the intended scope of the ordinance.

Andrew Reed, 728 Coventry Rd. thought the draft was a better attempt, but questioned the need for it at all. He argued that if Kensington were to have such an ordinance, the goal should be to minimize the impact upon the neighbors, and limit the number of events and the number of people attending. He believed the types of uses and numbers allowed are too high for R-6 zoning. He suggested changes to the ordinance based upon the zoning.

Tim Hoyer, 555 Coventry Rd., asked why the County was interested in such an ordinance in the first place. He believed the ordinance was much too broad, allowing too many events and events of commercial style activities, rather than family events and parties. He expressed opposition to the ordinance, stated he believed it was dangerous for the neighborhood and questioned the motivating force behind the ordinance.

Supervisor Gioia responded that currently there is a lot of uncertainty in this area and that the choices are litigation letting the courts decide the issue with his ignoring it, or to allow the County to enforce an ordinance in a just and equitable manner. While Supervisor Gioia might prefer to do nothing, he stated his belief that it was better for him to spend the hundreds of hours that he has put in attempting to resolve this issue and better for the community's interest to bring the ordinance forward.

George Kwei, 10 Kenilworth Court, stated he would prefer to take his chances in court. He thinks the number of events are too high and that the number of people allowed to attend is too high. He believes that the existing laws are adequate but, if anything, that existing ordinances should be made stronger to disallow this use,

rather than other way around. Supervisor Gioia explained that it is far from certain the County would prevail in litigation based upon the existing ordinances.

Bob Giusti, 112 Willow Ave., resident for 42 years. He stated his view that this was an ordinance drafted only to deal with the issue regarding Mr. Scher. He was against the ordinance and believed that the revised ordinance would not help at all, and if anything allowed that which the existing ordinances prohibit. He said, If we need anything, we need language that prevents this type of use, rather than allows it. Supervisor Gioia responded that it would be better to allow limited and proper use, rather than allow the problems to continue. Mr. Giusti responded that in R-6 zoning, this type of use should be prohibited, that this in his view was commercial use not appropriate to community. Discussion followed as to whether this was a commercial use or for family functions.

Kathy Stein, 32 Beverly Rd., spoke in favor of the ordinance, with restrictions. She believed ordinance was directed toward minimizing the impacts. She believed, however, that four events with 200 or more people attending each time was too many. She also stated that the applicant should cover all costs related to the event.

Linda Lipscomb, 103 Highland Blvd., spoke to the issue of clean up and set up of the events and how much time that took as part of the disturbance to the neighborhood.

Mr. Danny Scher was then asked his thoughts about the ordinance. Mr. Scher thought that the ordinance was much better than what they currently had in place. While he did not want to disturb the neighborhood, he also did not want to place unreasonable limits on his enjoyment of his property. As far as court, he believed that the court was only as good as the law one sought to enforce. As the current law was not clear, he therefore preferred this ordinance. He was unwilling to limit his events to 120 people or less. He felt that "unreasonable" is in the ear of the listener. He commended Supervisor Gioia for his Herculean effort on this matter. In response to questions as to why he could not hold the events at other venues, he responded that economics of show business would not allow that, and that the artists he has to his home are donating their time for worthy causes.

Jack Walker, 560 Coventry Ave. submitted a letter in opposition to the ordinance. He stated his belief that existing laws are adequate and that the uses allowed under the ordinance would permit currently illegal events that would reduce the value of his home. He believes the uses allowed under the proposed ordinance are directly contrary to R-6 zoning.

The Coventry Neighborhood Group also submitted a letter in opposition to the ordinance, citing the purpose of the ordinance, the definitions within the ordinance, the grounds for approval, the appeal process, the conditions for amplified sound and enforcement as inadequate.

Dr. Leonard Schwartzburd submitted a letter in which he stated he was strongly opposed to the ordinance because it is aimed at permitting a special interest. He believed that the ordinance was officious and unnecessary and that it resulted in

obscuring the protections afforded under current R-6 zoning. He believed that this ordinance was not “temporary”, was not needed for the purported first amendment issues but instead allowed for a commercial use, and was not otherwise authorized in other residentially zoned areas of the County. He further believed that the application and review process placed unreasonable burdens upon the residents, rather than the applicant, and that the proposed noise levels were unreasonably permissive and, even if enforced, would violate the neighbor’s rights to the peaceful enjoyment of their properties.

Public discussion was thereafter closed and KMAC members provided their thoughts.

Kay Reed then commented that she believed that there should be a reduction in the number of days events could be held and the number of people that could attend such events. Greater consideration should be given to the impact of the neighbors and a traffic management plan should be part of the requirements of the ordinance. She also believed that the evening hours should be limited, including post-event noise following the concerts. Also given this is an R-6 zoned area, she believes that commercial events should not be allowed, unless held in an appropriate area. Neighbors would not have reasonably known in advance, that they would have commercial concerts adjacent to their backyard. She believed this was a grant of special privilege to those who would put on such commercial events. She believed that if such an ordinance was to exist, it should err on the side of neighbors.

Pam Brown thanked Supervisor Gioia for all of the work he had put into this ordinance. She had concerns that the ordinance did not reasonably protect the neighbors, especially in light of the nature of the community, where there were neighbors on narrow streets in close proximity to the property at issue. She believed that unlike the Kensington Overlay Ordinance, which protected neighbors, this ordinance was the reverse: it seeks to protect one neighbor at the expense of many. She expressed her belief that the ordinance was overly broad in its scope and did not benefit the neighborhood.

Chair Barraza was concerned about the size of the events and believed that clarity is a good idea. He believed that we should use this opportunity to give the neighbors what is needed to protect their interests.

Christopher Brydon had objections to the number of events allowed and the allowed size of the events in light of the close proximity of the neighbors. He believed that while such an ordinance may be useful to portions of the unincorporated area where housing was not dense, that is not the case in Kensington.

Richard Karlsson stated his view that the existing laws did not appear to be clear regarding this type of use within R-6 zoning and that therefore it was beneficial to have an ordinance. He also stated that this ordinance was substantially better than the first, but it still left a number of unanswered questions in terms of the neighbors and the impact of the ordinance upon their rights to have reasonable protection from

commercial activities within Kensington. The question, therefore, became how much more restrictive this ordinance should be in light of the community input.

Supervisor Gioia responded that he strongly believed that an ordinance was preferable to doing nothing. He was sensitive to the issues of over-regulation and stated he would work with County Counsel and Community Development to revise the ordinance to make its application clearer. He said that the greatest challenge was to make this a county-wide ordinance, where there were a wide divergence as to what was necessary, and respond to the concerns of Kensington, where it was limited to one issue. In response to a question regarding stricter limitations for R-6 zoning, Supervisor Gioia responded that El Sobrante, as one example, was an area that desired less regulation, not more, even though it was zoned as R-6. He concluded by stating that the intent was not to have more expense to the neighbors who might oppose a request for a permit and that he would look into that issue, as well consider comments regarding over-regulation. He concluded by requesting a letter from KMAC summarizing its concerns.

Thereafter, Supervisor Gioia was congratulated for his efforts, both by those in support of and those who objected to the ordinance as presently drafted.

4. The meeting adjourned at 10:20 p.m. following a 5-0 vote.

Richard Karlsson  
Secretary